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In the Supreme Court of the United States

OCTOBER TERM, 1979

COMO-FALCON COMMUNITY COALITION, INC.,
PETITIONER

v.

UNITED STATES DEPARTMENT OF LABOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-41 to A-50) is reported at 609 F. 2d 342. The opinion of the district court (Pet. App. A-1 to A-41) is reported at 465 F. Supp. 850.

JURISDICTION

The judgment of the court of appeals was entered on November 19, 1979. The petition for a writ of certiorari was filed on February 19, 1980 (the Tuesday following a federal holiday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Department of Labor properly determined not to prepare an environmental impact statement in

connection with its selection of an existing school facility as a Job Corps center.

STATEMENT

1. This action concerns a proposal by respondent Department of Labor to establish a Job Corps center on the former campus of Bethel College and Seminary in St. Paul, Minnesota. Enrollees at the center will be disadvantaged youths, aged 16 to 21, who will receive basic education, vocational skills training, work experience, counselling, and health services. The proposed center will be residential and coeducational, with a maximum population of 411 enrollees and a staff of approximately 140 (Pet. App. A-3, A-23).

The site chosen for the center had been used since 1914 as the campus of Bethel College and Seminary. In 1972 the College moved to a new campus, but it has continued to use the former campus as dormitory housing for approximately 400 students. These students commute daily to the new Bethel campus (Pet. App. A-4).

The Department plans to spend more than $1 million to refurbish the existing buildings, but it contemplates no new construction (Pet. App. A-4). There exists adequate parking in the campus area for staff and visitors to the center, and the Job Corps enrollees will not be allowed to have vehicles. Vehicular traffic in the area should be reduced due to elimination of commuting by Bethel College students. Since Job Corps members may not leave the campus without a pass, pedestrian traffic may also decrease. Moreover, because the number of occupants of the center will approximate the previous student population of the campus, there will be no increased demand for public utilities. Finally, the Job Corps provides its own health care, legal services, and recreational facilities, and

hence there will be little or no impact on these local services (*id.* at A-23 to A-25).

The proposed establishment of the center was discussed at meetings of community residents held in May and October of 1977 (Pet. App. A-5 to A-6, A-43). After assessing the potential environmental impacts of the proposal, the Department on November 3, 1977, concluded that establishment of the center was not a major federal action significantly affecting the quality of the human environment, and therefore that no environmental impact statement (EIS) was required under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* (Pet. App. A-2, A-21).

Because of opposition expressed by some community members, the Governor of Minnesota initiated an investigation of the proposed center and the possibility of alternative sites. On December 29, 1977, the Governor conditionally approved establishment of the center (Pet. App. A-6 to A-7, A-43). The conditions of approval were the subject of negotiations between the Department and the Governor's office, and on April 18, 1978, the parties signed a Memorandum of Agreement approving the center (*id.* at A-7 to A-8). The Agreement provided in part that the local community would be allowed to review the selection of certain enrollees and that persons with a serious criminal history would not be selected for enrollment (*id.* at A-28 to A-29).

2. On February 1, 1978, petitioner, a nonprofit corporation comprised of residents living near the proposed site, commenced this action in the United States District Court for the District of Minnesota to enjoin establishment of the center. After a hearing on February 22, 1978, the district court preliminarily enjoined further work on the center. Without conceding that the existing

record was deficient, the Department undertook a supplemental study of the possible environmental impacts of the proposed center, and it again concluded that an environmental impact statement was not required. After a plenary trial, the district court dissolved the injunction on December 11, 1978, holding that the Department's decision not to prepare an EIS was reasonable (Pet. App. A-39 to A-41).

The court of appeals affirmed (Pet. App. A-41 to A-50). Characterizing the proposed action as the renovation of an existing educational facility and the replacement of college students by disadvantaged youths who will undergo vocational training (*id.* at A-49), the court of appeals upheld the district court's finding that the Department's reassessment had reasonably concluded that the project would have no significant impact on the environment (*id.* at A-47). As an alternative ground for decision, the court of appeals also held that secondary social and economic effects of a project, such as those alleged by petitioner, did not require that an EIS be prepared in the absence of a primary impact on the natural environment, and therefore that the district court had erred in ordering the Department to reassess its original determination of no significant impact on the environment (*id.* at A-47 to A-50). The court of appeals also rejected petitioner's claim that it had been denied a reasonable opportunity to present evidence to the Department, finding that the statute established no requirement for public hearings and that, in any event, the community had an adequate opportunity to express its views about the project (*id.* at A-45 to A-46). Finally, the court of appeals did not pass upon petitioner's argument that the Memorandum of Agreement was unenforceable, since this question was unrelated to the EIS issue and at all events was not yet ripe for resolution (*id.* at A-43 n.1).

ARGUMENT

The decision of the court of appeals is correct, and does not conflict with any decision of this Court or of the other courts of appeals. Moreover, the decision below depends largely upon the particular facts of this case. Accordingly, further review is unwarranted.

1. Petitioner principally contends (Pet. 6-9) that the court of appeals erred in not requiring the Department of Labor to prepare an environmental impact statement for the proposed Job Corps center. In petitioner's view, the decision of the court of appeals conflicts with the decisions of the United States Court of Appeals for the Second Circuit in *Hanly* v. *Mitchell (Hanly I)*, 460 F. 2d 640, cert. denied, 409 U.S. 990 (1972), and *Hanly* v. *Kleindienst (Hanly II)*, 471 F. 2d 823 (1972), cert. denied, 412 U.S. 908 (1973). This contention is without merit.

The court of appeals correctly held (Pet. App. A-47 to A-50) that an environmental impact statement need not be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) where the proposed federal project will not have a primary impact on the physical or natural environment. Absent such an effect, NEPA does not require an EIS with respect to solely social and economic factors. See, *e.g.*, *Image of Greater San Antonio, Texas* v. *Brown*, 570 F. 2d 517, 522 (5th Cir. 1978); *National Association of Government Employees* v. *Brown*, 556 F. 2d 76 (D.C. Cir. 1977) (table), aff'g 413 F. Supp. 1224, 1229-1230 (D.D.C. 1976); *Breckinridge* v. *Rumsfeld*, 537 F. 2d 864, 865-867 (6th Cir. 1976), cert. denied, 429 U.S. 1061 (1977); *Nucleus of Chicago Homeowners Ass'n* v. *Lynn*, 524 F. 2d 225, 231 (7th Cir. 1975), cert. denied, 424 U.S. 967 (1976); *Maryland-National Capital Park & Planning Comm'n* v.

U.S. Postal Serv., 487 F. 2d 1029, 1037 (D.C. Cir. 1973). The court of appeals' decision is also consistent with the regulations of the Council on Environmental Quality (CEQ) construing the term "human environment" as used in NEPA (40 C.F.R. 1508.14):

> "Human Environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. * * * This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

As this Court has recently observed, "CEQ's interpretation of NEPA is entitled to substantial deference." *Andrus* v. *Sierra Club*, 442 U.S. 347, 358 (1979).

Nor is the decision below inconsistent with the Second Circuit's decisions in the *Hanly* cases. *Hanly* involved the construction of a new 12-story jail in lower Manhattan. See *Hanly II*, *supra*, 471 F. 2d at 826. The court held that the General Services Administration, in determining whether to prepare an EIS, must assess the effect of the jail on the risk of crime in the neighboring community. *Id.* at 834. However, *Hanly* required consideration of these alleged socio-economic factors "only when there existed a primary impact on the physical environment." *Breckinridge* v. *Rumsfeld*, *supra*, 537 F. 2d at 866. See *Hanly I*, *supra*, 460 F. 2d at 647; see also *Image of Greater San Antonio, Texas* v. *Brown*, *supra*, 570 F. 2d at 522; *Trinity Episcopal School Corp.* v. *Romney*, 523 F. 2d 88, 93-94 (2d Cir. 1975); *National Association of*

Government Employees v. *Brown*, *supra*, 413 F. Supp. at 1229. Thus, the decisions in *Hanly* are not at odds with the decision of the court of appeals in the instant case.

In any event, even if a conflict did exist, this case would not present an appropriate occasion for the Court to resolve the question. In contrast to the construction of a major new correctional facility in *Hanly*, the project at issue here is "simply to renovate an existing educational facility * * * [which] will continue to be used to provide education. College students will be replaced with disadvantaged youths who will undergo vocational training" (Pet. App. A-49). As both the district court (*id.* at A-39) and the court of appeals (*id.* at A-47) found, the Department of Labor adequately considered the matters raised by petitioner and correctly concluded that an EIS was not required. This finding is amply supported by the record, and indeed is not challenged by petitioner. Hence, even assuming that socio-economic effects alone could necessitate an environmental impact statement, the Department of Labor properly determined not to prepare such a statement in this case.

2. Petitioner next contends (Pet. 11) that it was improperly denied the opportunity to submit to the Department "the results of its nationwide investigation into the effect other Job Corps centers had on surrounding communities." This submission apparently would have consisted of "evidence of disturbances at and near other Job Corps centers" (Pet. App. A-27) and "a rise in crime in communities near other centers" (*id.* at A-28).

Petitioner's contention is unavailing for several reasons. First, the court of appeals correctly held (Pet. App. A-46) that "there is no statutory requirement that the agency provide such an opportunity [for public input and opinion

through a public hearing], or an opportunity of a particular kind, and we are unwilling by judicial decision to legislate such a requirement into the [National Environmental Policy] Act."[1] See also *Jicarilla Apache Tribe of Indians* v. *Morton*, 471 F. 2d 1275, 1286 (9th Cir. 1973). This holding recognizes "that the only procedural requirements imposed by NEPA are those stated in the plain language of the Act" (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 548 (1978)), and is in accord with "the fundamental administrative law principle that 'the formulation of procedures was basically to be left within the discretion of the agencies to which Congress had confided the responsibility for substantive judgments' " (*Costle* v. *Pacific Legal Foundation*, No. 78-1472 (Mar. 18, 1980), slip op. 16, quoting *Vermont Yankee Nuclear Power Corp.* v. *NRDC, supra*, 435 U.S. at 524).

Moreover, even if a suitable opportunity for public comment were necessary in some situations, no such opportunity would extend to petitioner, since, as discussed above (see pages 5-7, *supra*), the socio-economic evidence on crime that it seeks to submit is not relevant to the Department's determination whether to prepare an EIS. Cf. *Costle* v. *Pacific Legal Foundation*, *supra*, slip op. 21; *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192, 205 (1956). At all events, the district court examined petitioner's evidence in this regard (Pet. App. A-27 to A-28) and concluded (*id.* at A-28) that it was "not

[1]Although it held that NEPA does not require a public hearing, the court of appeals did indicate (Pet. App. A-46) that "in weighing the reasonableness of the agency action [in deciding not to prepare an EIS] the court may consider the opportunity of the public, through hearings or otherwise, to make their views known and to make input into the decision."

necessarily probative of increased criminal activity" at the specific Job Corps center in question in this case. And, finally, both the court of appeals (*id.* at A-46 to A-47) and the district court (*id.* at A-38 to A-39) found that the Department had in fact afforded an adequate opportunity for the public to express its views.[2]

3. Petitioner lastly contends (Pet. 11-13) that the section of the Agreement between the Department and the Governor providing that convicted felons would not be enrolled at the Job Corps center has been superseded by a 1978 amendment to the Comprehensive Employment and Training Act that prohibits the denial of "a position in the Job Corps solely on the basis of [an] individual's contact with the criminal justice system" (Pub. L. No. 95-524, Section 454(b), 92 Stat. 1994, 29 U.S.C. (Supp. II) 927(b)).

The courts below properly declined to rule on this issue (Pet. App. A-30 to A-31, A-43 n.1).[3] The continued validity of this provision of the Agreement is simply immaterial to the EIS issue, since, as previously discussed (see pages 5-7, *supra*), the criminal background of Job Corps enrollees does not, standing alone, bear on the decision whether to prepare an environmental impact statement. Moreover, the district court correctly found that, even assuming the invalidity of this provision, "sufficient steps have been taken to ensure that the impact of the center on the security of the neighborhood will not be significant" (Pet. App. A-31). What is more, no

[2]We also note that the Department had considered evidence, similar to that petitioner desires to present, of the incidence of crime at other Job Corps centers (Pet. App. A-27).

[3]The court of appeals also questioned petitioner's standing to raise the issue (Pet. App. A-43 n.1).

enrollees have yet been selected for the proposed Job Corps center, and it is premature at this point to consider either the abstract validity of this portion of the Agreement or the possible effect of its invalidation on the operation of the program.[4]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[4]Petitioner's contention (Pet. 13) that the agreement was extensively relied upon by the Department in deciding not to prepare an EIS is unsupported. In fact, the Department's determination of no significant impact was issued on November 3, 1977, *before* the Agreement was signed in April of 1978 (Pet. App. A-2, A-8).

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